

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ARTHROCARE CORPORATION,

Plaintiff,

v.

SMITH & NEPHEW, INC.

Defendant.

C.A. No. 01-504-SLR

SMITH & NEPHEW, INC.,

Counterclaim Plaintiff,

v.

ARTHROCARE CORPORATION, AND  
ETHICON, INC.,

Counterclaim Defendants.

**JURY VERDICT**

We, the jury, unanimously find as follows:

## I. INFRINGEMENT OF ARTHROCARE'S PATENTS

### A. The '536 Patent

#### Direct Infringement by Smith & Nephew of the '536 Patent

1. Do you find that Arthrocare has shown by a preponderance of the evidence that Smith & Nephew has directly infringed any of the following claims of the '536 patent with its Saphyre, ElectroBlade, or Control RF products? ("YES" answers to these questions are findings for ArthroCare. "NO" answers are findings for Smith & Nephew.)

Patent	Claim	Saphyre	ElectroBlade	Control RF
'536	46	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'536	47	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'536	56	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO

#### Inducement of Infringement by Smith & Nephew

2. Do you find that Arthrocare has shown by a preponderance of the evidence that Smith & Nephew has induced infringement by others of any of the following claims of the '536 patent with its Saphyre, ElectroBlade, or Control RF products? ("YES" answers to these questions are findings for ArthroCare. "NO" answers are findings for Smith & Nephew.)

Patent	Claim	Saphyre	ElectroBlade	Control RF
'536	46	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'536	47	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'536	56	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO

### Contributory Infringement by Smith & Nephew

3. Do you find that Arthrocare has shown by a preponderance of the evidence that Smith & Nephew has contributed to the infringement any of the following claim : of the '536 patent with its Saphyre, ElectroBlade, or Control RF products? ("YES" answers to these questions are findings for ArthroCare. "NO" answers are findings for Smith & Nephew.)

Patent	Claim	Saphyre		ElectroBlade		Control RF	
'536	46	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'536	47	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'536	56	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO

**B. The '882 Patent**

**Validity of ArthroCare's Certificate of Correction for the '882 Patent**

4. Do you find that Smith & Nephew has shown by clear and convincing evidence that the certificate of correction for claim 1 of the '882 patent is invalid? (A "YES" answer to this question is a finding for Smith & Nephew. A "NO" answer is a finding for ArthroCare.)

Patent	Claim	Invalid
'882	1	YES <u>NO</u>

Answer questions 5-6 only if you have answered "NO" in question 4.

**Inducement of Infringement by Smith & Nephew of the '882 Patent**

5. Do you find that Arthrocare has shown by a preponderance of the evidence that Smith & Nephew has induced infringement by others of any of the following claims of the '882 patent with its Saphyre or Control RF products? ("YES" answers to these questions are findings for ArthroCare. "NO" answers are findings for Smith & Nephew.)

Patent	Claim	Induced	Induced	Induced	Induced
'882	13	<u>YES</u> NO			
'882	17	<u>YES</u> NO			<u>YES</u> NO
'882	54		<u>YES</u> NO		<u>YES</u> NO

### Contributory Infringement by Smith & Nephew of the '882 Patent

6. Do you find that Arthrocare has shown by a preponderance of the evidence that Smith & Nephew has contributed to the infringement of any of the following claims of the '882 patent with its Saphyre or Control RF products? ("YES" answers to these questions are findings for ArthroCare. "NO" answers are findings for Smith & Nephew.)

Patent	Claim	Saphyre	Saphyre with Suction	Control RF	Control RF
'882	13	<input checked="" type="radio"/> YES <input type="radio"/> NO			
'882	17	<input checked="" type="radio"/> YES <input type="radio"/> NO			<input checked="" type="radio"/> YES <input type="radio"/> NO
'882	54		<input checked="" type="radio"/> YES <input type="radio"/> NO		<input checked="" type="radio"/> YES <input type="radio"/> NO

**C. The '592 Patent**

**Inducement of Infringement by Smith & Nephew of the '592 Patent**

7. Do you find that Arthrocare has shown by a preponderance of the evidence that Smith & Nephew has induced infringement by others of any of the following claims of the '592 patent with its Saphyre, ElectroBlade, or Control RF products? ("YES" answers to these questions are findings for ArthroCare. "NO" answers are findings for Smith & Nephew.)

Patent	Claim	Saphyre	ElectroBlade	Control RF
'592	1	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	3	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	4	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	11	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	21			<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	23	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	26	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	27	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	32	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
'592	42			<input checked="" type="radio"/> YES <input type="radio"/> NO

# **Contributory Infringement by Smith & Nephew of the '592 Patent**

8. Do you find that Arthrocare has shown by a preponderance of the evidence that Smith & Nephew has contributed to the infringement of any of the following claims of the '592 patent with its Saphyre, ElectroBlade, or Control RF products? ("YES" answers to these questions are findings for ArthroCare. "NO" answers are findings for Smith & Nephew.)

Patent	Claim	Saphyre		ElectroBlade		Control RF	
'592	1	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	3	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	4	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	11	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	21					<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	23	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	26	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	27	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	32	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO	<input checked="" type="radio"/> YES	<input type="radio"/> NO
'592	42					<input checked="" type="radio"/> YES	<input type="radio"/> NO

## II. VALIDITY OF ARTHROCARE'S PATENTS

### A. Anticipation of ArthroCare's Patents

9. Do you find that Smith & Nephew has shown by clear and convincing evidence that the following claims of the patents-in-suit are invalid due to anticipation? (A "YES" answer to this question is a finding for Smith & Nephew. A "NO" answer is a finding for ArthroCare.)

#### The '536 Patent

	Anticipated	
Claim 46	YES	<input checked="" type="radio"/> NO
Claim 47	YES	<input checked="" type="radio"/> NO
Claim 56	YES	<input checked="" type="radio"/> NO

#### The '882 Patent

	Anticipated	
Claim 13	YES	<input checked="" type="radio"/> NO
Claim 17	YES	<input checked="" type="radio"/> NO
Claim 54	YES	<input checked="" type="radio"/> NO

#### The '592 Patent

	Anticipated	
Claim 1	YES	<input checked="" type="radio"/> NO
Claim 3	YES	<input checked="" type="radio"/> NO
Claim 4	YES	<input checked="" type="radio"/> NO
Claim 11	YES	<input checked="" type="radio"/> NO
Claim 21	YES	<input checked="" type="radio"/> NO
Claim 23	YES	<input checked="" type="radio"/> NO
Claim 26	YES	<input checked="" type="radio"/> NO
Claim 27	YES	<input checked="" type="radio"/> NO
Claim 32	YES	<input checked="" type="radio"/> NO
Claim 42	YES	<input checked="" type="radio"/> NO



**D. Enablement of ArthroCare's Patent**

10. Do you find that Smith & Nephew has shown by clear and convincing evidence that the following claims are invalid for lack of enablement? (A "YES" answer to this question is a finding for Smith & Nephew. A "NO" answer is a finding for ArthroCare.)

Patent	Claims	Invalid
'882	13, 17, 54	YES <input checked="" type="radio"/> NO

Each Juror should sign the verdict form to reflect that a unanimous verdict has been reached.

Dated: May 12, 2003

Deephire Adkins  
Foreperson

Stacy Miranda

Christine M. Murray

Glen Hansen

Barbara H. O'Neal

Ty L. Byrnes

Carol Hansen

John X. Dehaer

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